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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/005,710 01/12/98 MCALEER

J SELF.P-005-2

EXAMINER

IM41/0805

OPPEDAHL & LARSON
1992 COMMERCE STREET
SUITE 309

YORKTOWN HEIGHTS NY 10598-4412

ART UNIT PAPER NUMBER

1741

DATE MAILED: 08/05/98

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 17 + 18 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☐ Claims _____ are allowed.

4. ☒ Claims 17 + 18 are rejected.

5. ☐ Claims _____ are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

Art Unit: 1741

Double Patenting

1. Claims 17 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 17-23 of U.S. Patent No. 5,708,247.

Although the conflicting claims are not identical, they are not patentably distinct from each other because even though the instant claims do not specify the specific type of filler used, the instant claims as set forth encompass the claims as set forth in the U.S. Patent 5,708,247 which include a specific filler of silica which has the same properties as those set forth in the instant claims 17 and 18.

Terminal Disclaimer

Applicant is requested to file a timely terminal disclaimer in order to overcome the Double Patenting Rejection above.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce Bell whose telephone number is (703) 308-2527.

BFB

August 2, 1998


BRUCE F. BELL
PRIMARY EXAMINER
GROUP 1100